

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 05-0055
Indiana Individual Income Tax
For 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sufficiency of Proposed Assessment Notice.

Authority: IC 6-8.1-5-1; IC 6-8.1-5-1(a); IC 6-8.1-5-1(b).

Taxpayer argues that the notice of proposed tax assessment was insufficient and that he requires a "verified bill" before he will consider paying the assessment.

II. Administrative Due Process.

Authority: U.S. Const. amend. V; U.S. Const. amend. XIV; JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW (5th ed. 1995).

Taxpayer claims that issuance of the proposed assessment constituted a denial of administrative due process.

III. Unapportioned State Income Tax.

Authority: U.S. Const. art. I, § 2, cl. 3; U.S. Const. art. I, § 8, cl. 1; U.S. Const. amend. XVI; Ind. Const. art. X, § 8; IC 6-3-1-3.5 et seq.; United States v. Collins, 920 F.2d 619 (10th Cir. 1990); Lovell v. United States, 755 F.2d 517 (7th Cir. 1984).

Taxpayer maintains that Indiana is not entitled to impose or collect an unapportioned state income.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who did not file state income tax returns for several tax periods. Based upon information forwarded by the IRS, the Department of Revenue (Department) determined that taxpayer should have paid state income tax for 2001. Therefore, the Department sent taxpayer a notice of "Proposed Assessment" dated September 13, 2004. Taxpayer disagreed with the Department's decision and sent the Department a protest to that effect. Taxpayer was offered the opportunity to further explain the basis for his protest during an administrative hearing. Taxpayer declined the opportunity to do so. As a result, this Letter of Findings is based

on taxpayer's original protest letter and upon the supplemental correspondence directed to the Hearing Officer.

DISCUSSION

I. Sufficiency of Proposed Assessment Notice.

Taxpayer objects to the notice of "Proposed Assessment." In place of the notice the Department first sent to the taxpayer, taxpayer claims that he is entitled to a "verified bill" signed under penalty of perjury.

IC 6-8.1-5-1(a) in part states that, "If the department reasonably believes that a person has not reported the proper amount of tax due, the department *shall* make a proposed assessment of the amount of the unpaid taxes on the basis of the best information available to the department." (*Emphasis added*). IC 6-8.1-5-1(b) in part states that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid."

The Department sent taxpayer the notice of "Proposed Assessment" because it had obtained information indicating that taxpayer received taxable income during 2001. The notice was based upon information received from the IRS. That information constituted "the best information available to the department." IC 6-8.1-5-1(a).

There is no indication that the Department did anything less than was required under the law when it sent taxpayer the notice of "Proposed Assessment" in which the Department indicated that taxpayer owed 2001 income taxes. There is nothing in IC 6-8.1-5-1 which requires the Department to send taxpayer a "verified bill" or that the notice be signed under penalty of perjury. Taxpayer has unilaterally imposed upon the Department a procedural and substantive requirement that is not required under the law.

FINDING

Taxpayer's protest is denied.

II. Administrative Due Process.

Taxpayer believes that his constitutional guarantee of due process was given short shrift by the Department. Taxpayer suggests that this denial of "meaningful due process of law and notification of my Administrative Due Process Rights" would potentially subject the Department to a "Federal Civil Rights and other Tort Actions for violation of Constitutional Rights."

Both the Fifth and Fourteenth Amendments prohibit governmental actions which would deprive "any person of life, liberty or property without due process of law." U.S. Const. amend. V; U.S. Const. amend. XIV. "The essential guarantee of the due process clause is that of fairness. The procedure must be fundamentally fair to the individual in the resolution of the factual and legal

basis for government actions which deprive him of life, liberty or property.” JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW p. 561 (5th ed. 1995).

After taxpayer sent his initial protest letter dated September 28, 2004, taxpayer was sent a letter from the Department dated February 4, 2005, indicating that it had received taxpayer’s letter and that the “Department [would] review the protest as soon as possible and [would] contact him.” Taxpayer responded with a letter dated February 18 indicating that he was not “arguing anything,” that he was not “objecting to the law,” and that he was “willing to pay any debt [he] lawfully owe[d].” Nonetheless, taxpayer’s challenge of the assessment was assigned to a Hearing Officer. The Hearing Officer sent taxpayer a letter dated February 23 offering taxpayer the opportunity to further explain his position at an administrative hearing. Taxpayer was offered the choice of conducting the hearing by telephone or in person. Taxpayer was offered the opportunity to choose a date and time for the hearing. Taxpayer responded with a letter dated February 26 stating the he was currently involved in unrelated litigation and again offered to pay “any debit [he] lawfully owed” as soon as he was sent a “certified bill and also a jury or bench judgment” The hearing officer responded in a letter dated March 1 stating that the litigation in which taxpayer was then involved was “irrelevant to the notice of proposed assessment originally issued on September 13, 2004.” Taxpayer was asked to schedule and take part in an administrative hearing. Taxpayer responded with a letter dated March 3, 2004 in which taxpayer again objected to the proposed assessment, raised additional objections, but failed to respond to the offer to take part in an administrative hearing. The Hearing Officer answered in a letter dated March 9. In this letter, the offer to schedule an administrative hearing was repeated. However, taxpayer was cautioned that if he waived the right to an administrative hearing, the Letter of Findings would be prepared and would be “based upon the written information currently before [the Hearing Officer].” Taxpayer failed to respond, and the Letter of Findings was drafted on April 8, 2005.

The taxpayer has failed to demonstrate that he was in any way denied his right to due process. To the contrary, taxpayer declined to take part in an administrative hearing in which he would have been provided the opportunity to explain the basis for his challenge of the proposed assessment. Contrary to the taxpayer’s unfounded assertion, taxpayer was provided a full and fair opportunity to air his grievances; taxpayer received all the administrative due process that he was owed.

FINDING

III. Unapportioned State Income Tax.

Taxpayer maintains that the Indiana is without authority to levy an unapportioned state income tax.

Taxpayer apparently refers to the provisions of the Constitution granting powers of taxation to the Congress. U.S. Const. art. I, § 2, cl. 3 states that, “Representatives and direct Taxes shall be apportioned among the several states which may be included within this Union, according to their respective Numbers” U.S. Const. art. I, § 8, cl. 1, states that, “The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.” However, the Sixteenth Amendment permitted

imposition of a federal income tax without apportionment among the states. “The Congress shall have power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.” U.S. Const. amend. XVI.

Since the Sixteenth Amendment was ratified in 1913, the courts have implicitly and explicitly recognized that the Amendment authorizes a non-apportioned direct income tax on United States citizens and that federal tax laws are valid. In United States v. Collins, 920 F.2d 619 (10th Cir. 1990), *cert denied*, 500 U.S. 920 (1991), the court cited to Brushaber v. Union Pacific R.R., 240 U.S. 1 (1916) and noted that the United States Supreme Court has recognized that the “sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation.” Collins, 920 F.2d at 629.

In Lovell v. United States, 755 F.2d 517 (7th Cir. 1984), the court rejected the plaintiffs’ argument that the Constitution prohibited the imposition of a direct, unapportioned income tax and concluded that “there is absolutely no doubt that the legal contentions advanced by the plaintiffs are frivolous; indeed, plaintiffs’ arguments are patently absurd.” Id. at 519.

However, taxpayer’s argument touches on Indiana’s right to levy a state income tax, but it is somewhat difficult to understand taxpayer’s argument that a state tax must be “apportioned” among the residents of that state. The Indiana Constitution simply states that, “The general assembly may levy and collect a tax upon income from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law.” Ind. Const. art. X, § 8. The Indiana General Assembly has exercised its constitutional prerogative by imposing a state adjusted gross income tax on individuals and corporations. IC 6-3-1-3.5 et seq.

Taxpayer has advanced a number of other legal arguments including the assertion that Indiana taxes are founded in contract and that he did not sign a contract with the state, that Indiana does not possess the authority to collect federal reserve notes, and that the Department has not satisfactorily proved taxpayer’s identity. These and taxpayer’s remaining arguments are frivolous and the Department will not expend further resources addressing them.

FINDING

Taxpayer’s protest is denied.